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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**CEDRIC WIENOLD,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**THE MCCLATCHY
COMPANY,**

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. CEDRIC WIENOLD (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of THE MCCLATCHY COMPANY (“Defendant”), in negligently or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that
 [b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

1 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
2 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's
3 purpose).

4 4. Congress also specifically found that “the evidence presented to the
5 Congress indicates that automated or prerecorded calls are a nuisance and an
6 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See
7 also, *Mims*, 132 S. Ct. at 744.

8 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
9 case regarding calls to a non-debtor similar to this one:

10 The Telephone Consumer Protection Act ... is well known for
11 its provisions limiting junk-fax transmissions. A less-litigated
12 part of the Act curtails the use of automated dialers and
13 prerecorded messages to cell phones, whose subscribers often
14 are billed by the minute as soon as the call is answered—and
15 routing a call to voicemail counts as answering the call. An
16 automated call to a landline phone can be an annoyance; an
17 automated call to a cell phone adds expense to annoyance.

18 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

19 JURISDICTION AND VENUE

20 6. This Court has federal question jurisdiction because this case arises out of
21 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
22 132 S. Ct. 740 (2012).

23 7. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
24 Plaintiff resides in the County of San Luis Obispo, State of California which
25 is within this judicial district; (ii) the conduct complained of herein occurred
26 within this judicial district; and, (iii) Defendant conducted business within
27 this judicial district at all times relevant.

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PARTIES

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the County of San Luis Obispo, State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 277(a)(2)(A).
9. Defendant is a newspaper company that owns various local newspapers throughout California, including several within the Central District, and is a “person” as defined by 47 U.S.C. § 227(a)(2)(A). Defendant’s State of Information and principal place of business are in the State of California.

FACTUAL ALLEGATIONS

10. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California, County of San Luis Obispo, and within this judicial district.
11. At no time did Plaintiff ever enter into a business relationship with Defendant.
12. Beginning in 2015, Plaintiff began receiving telephonic communications from Defendant to Plaintiff’s cellular telephone.
13. Plaintiff answered numerous telephonic communications in 2015; and, 2016.
14. On several occasion, Plaintiff was greeted by a prerecorded voice that informed Plaintiff that Plaintiff was delinquent on Plaintiff’s account with Defendant with regard to the Merced Sun-Star.
15. However, Plaintiff has never subscribed to Plaintiff’s services nor has Plaintiff ever purchased a newspaper provided by the Merced Sun-Star.
16. Once connected to a live human representative, Plaintiff repeatedly informed these representatives that Defendant was contacting the wrong individual; that Plaintiff would not pay this debt; and, that Plaintiff wanted the unwanted telephonic communications to end immediately.

1 17. During the course of these telephonic communications, Plaintiff also placed
2 Plaintiff's cellular telephone on the National "Do Not Call" list.

3 18. Despite being on the Do Not Call list and despite repeatedly informing
4 Defendant's representatives to stop calling Plaintiff, the automated calls to
5 Plaintiff's cellular telephone continued.

6 19. Defendant used an "automatic telephone dialing system", as defined by 47
7 U.S.C. § 227(a)(1) to the artificial or prerecorded message to Plaintiff as
8 prohibited by 47 U.S.C. § 227(b)(1)(A).

9 20. On information and belief, Defendant utilized a predictive dialer to contact
10 Plaintiff.

11 21. This ATDS has the capacity to store or produce telephone numbers to be
12 called, using a random or sequential number generator.

13 22. These telephone communications constituted telephone solicitations as
14 defined by 47 U.S.C. § 227(a)(4).

15 23. Defendant's calls constituted calls that were not for emergency purposes as
16 defined by 47 U.S.C. § 227(b)(1)(A)(i).

17 24. Defendant's calls were placed to telephone number assigned to a cellular
18 telephone service for which Plaintiff incurs a charge for incoming calls
19 pursuant to 47 U.S.C. § 227(b)(1).

20 25. Plaintiff has never been in an "established business relationship" with
21 Defendant as defined by 47 U.S.C. 227(a)(2), nor has Plaintiff ever sought
22 Defendant's services at any point in the past.

23 26. Defendant lacked "prior express consent" to contact Plaintiff on Plaintiff's
24 cellular telephone as described herein.

25 27. To date, Plaintiff has more than ten autodialed telephone calls on Plaintiff's
26 cellular telephone from Defendant.

27 28. These telephone communications by Defendant, or its agent, violated 47
28 U.S.C. § 227(b)(1).

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated (“the Class”).

30. Plaintiff represents, and is a member of the Class, consisting of all persons within the United States who received any telephone call from Defendant or their agent/s and/or employee/s to said person’s cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded message, which call was not placed for emergency purposes within the four years prior to the filing of this Complaint.

31. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the Class members number in the hundreds of thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

32. Plaintiff and members of the Class were harmed by the acts of Defendant in at least the following ways: Defendants, either directly or through its agents, illegally contacted Plaintiff and the Class members via their cellular telephones by using an ATDS, thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, and invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class members were damaged thereby.

33. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

34. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendant's records or Defendant's agents' records.

35. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions which may affect individual Class members, including the following:

- a) Whether, within the four years prior to the filing of this Complaint, Defendant or its agents initiated any telephonic communications to the Class (other than a message made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic dialing and/or SMS texting system to any telephone number assigned to a cellular phone service;
- b) Whether Defendant can meet its burden of showing it obtained prior express consent (i.e., consent that is clearly and unmistakably stated);
- c) Whether Defendant's conduct was knowing and/or willful;
- d) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- e) Whether Defendants and its agents should be enjoined from engaging in such conduct in the future.

36. As a person that received at least one telephonic communication from Defendant's ATDS without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

37. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class

1 action, the Class will continue to face the potential for irreparable harm. In
2 addition, these violations of law will be allowed to proceed without remedy
3 and Defendants will likely continue such illegal conduct. Because of the
4 size of the individual Class member's claims, few, if any, Class members
5 could afford to seek legal redress for the wrongs complained of herein.

6 38. Plaintiff has retained counsel experienced in handling class action claims
7 and claims involving violations of the Telephone Consumer Protection Act.

8 39. A class action is a superior method for the fair and efficient adjudication of
9 this controversy. Class-wide damages are essential to induce Defendants to
10 comply with federal and California law. The interest of Class members in
11 individually controlling the prosecution of separate claims against
12 Defendants is small because the maximum statutory damages in an
13 individual action for violation of privacy are minimal. Management of these
14 claims is likely to present significantly fewer difficulties than those
15 presented in many class claims.

16 40. Defendant has acted on grounds generally applicable to the Class, thereby
17 making appropriate final injunctive relief and corresponding declaratory
18 relief with respect to the Class as a whole.

19 **FIRST CAUSE OF ACTION**

20 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

21 **47 U.S.C. § 227 ET SEQ.**

22 41. Plaintiff incorporates by reference all of the above paragraphs of this
23 Complaint as though fully stated herein.

24 42. The foregoing acts and omissions of Defendant constitutes numerous and
25 multiple negligent violations of the TCPA, including but not limited to each
26 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
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43. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

44. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

45. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

46. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

47. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

48. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and The Class Members pray for judgment as follows:

- Certifying the Class as requested herein;
- Providing such further relief as may be just and proper.

In addition, Plaintiff and The Class Members pray for further judgment as follows:

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**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

49. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: March 7, 2017

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF